IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO. 2046 OF 2006

KASHINATH CHANDKRAKANT GANESHKAR
residing at Tulsi Pipe Road,)
Dadar, Mumbai 400 028)
At present in Nashik Road)
Central Prison, Nashik) .. PETITIONER

Versus

1. SHRI A. N. ROY)
COMMISSIONER OF POLICE)
GREATER BOMBAY, MUMBAI)
2. THE STATE OF MAHARASHTRA)
through the Secretary)
Home Department (Spl.))
Mantralaya, Mumbai.)
3. THE SUPERINTENDENT, Nashik)
Road Central Prison, Nashik) .. RESPONDENTS

Mr. U.N. Tripathi petitioner
Mr. D. S. Mhaispurkar, APP

CORAM:-SMT. RANJANA DESAI &
V. C. DAGA, JJ.

DATED:-30/3/2007

ORAL JUDGMENT: (Smt. Ranjana Desai, J.)

. The petitioner is a friend of one Naresh @ Narya Vijaykumar Jaiswal ("the detenu" for convenience). The detenu is detained under the order of detention dated 21/7/06, issued by the Commissioner of Police, Brihan Mumbai, respondent 1 herein under the provisions of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 ("the said Act" for short), with a view to preventing him from acting in any manner prejudicial to the maintenance of public order. In this petition, there is a challenge to the said order.

2. The order of detention is based on one C.R. being C.R. No. 64/06 registered against the detenu at Shivaji Park Police Station, under Section 394 read with Section 34 of the I.P.C. The order of detention is also based on two in camera statements of witnesses A and B.

3. Statement of witness A is recorded on 30/5/06 and Statement of witness B is recorded on 31/5/06. The proposal for detention of the detenu was submitted on 21/6/06. After perusing the documents submitted with the proposal the detaining authority

issued the impugned order of detention.

4. We have heard Mr. Tripathi, learned counsel for the petitioner. Mr. Tripathi assailed the impugned order of detention only on one ground. He submitted that the order of detention is based on two in camera statements. Mr. Tripathi submitted that the case of the detaining authority is that the in camera statements have been verified by the Divisional ACP. However, the copies of the in camera statements supplied to the detenu do not indicate that the said statements have been verified. He submitted that in view of this there is a violation of the detenu's rights under Article 22(5) of the Constitution of India. Hence the detention order must be set aside on that count. In support of his submissions the learned counsel relied on the judgments of this court in **Smt. Subhangi Tukaram Sawant v. Shri R. H. Mendonca & Ors., 2001 ALL MR (Cri) 68** and in **Shri Vijay Ramchandra Angre v. Shri S.M. Shangari & Ors., 2004 ALL MR (Cri.) 1974**.

5. We have also heard Mr. Mhaispurkar, the learned APP. The learned APP did not dispute that the copies of in camera statements which are

supplied to the detenu do not bear the endorsement that they were verified by the Divisional ACP.

6. In this connection, we may usefully refer to the judgment of this court in **Smt. Subhangi's case (supra)**. In somewhat similar fact situation the order of detention was set aside because the petitioner was not supplied the complete in camera statements particularly the verification made by the Assistant Commissioner of Police. This court held that this resulted in violation of Article 22(5) of the Constitution of India.

7. In our opinion, the present case is clearly covered by this judgment. Hence the order of detention will have to be set aside on that count. Hence we pass the following order:

. "The order of detention dated 21/7/06 issued by respondent 1, the Commissioner of Police, Mumbai is quashed and set aside. The detenu Shri Naresh @ Narya Vijaykumar Jaiswal is ordered to be released forthwith unless otherwise required in any other case.

. Petition is disposed of."

JUDGE.

JUDGE.

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Versus

THE COMMISSIONER OF POLICE & ORS. .. RESPONDENTS

Mr. U.N. Tripathi petitioner

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CORAM:-SMT. RANJANA DESAI &

V. C. DAGA, JJ.

DATED:-30/3/2007

OPERATIVE PART OF THE ORDER:

. For the reasons separately recorded in the oral judgment, this Court has quashed and set aside the impugned order of detention dated 21st July, 2006 and ordered release of the detenu Shri Naresh @ Narya Vijaykumar Jaiswal forthwith unless otherwise required in any other case.

JUDGE.

JUDGE.